

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

74-2009

Docket No. 74-2009

B

no

By

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IN THE

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

THE UNITED STATES OF AMERICA,

Appellee,

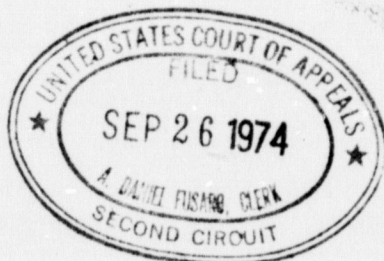
-VS-

TERRY WAYNE JENKINS,

Appellant.

APPENDIX FOR THE APPELLANT

THIELMAN & LALIME
Attorneys for Appellant
Office & Post Office Address
1710 Liberty Bank Building
Buffalo, New York 14202



PAGINATION AS IN ORIGINAL COPY

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CRIMINAL DOCKET ENTRIES

Date 1974	Proceedings
March 14	Filed Indictment.
March 14	J.S. 2 made.
March 14	Govt. request a warrant of arrest to issue. Granted.
March 15	Issued warrant.
March 25	Filed Warrant. Executed 3/19/1974 - (notation on bottom of warrant -states def. arrested on 3/19/1974 at Hollywood, Florida; in U.S. Marshal custody, Miami, Florida, pending removal hearing 3/28/74; bail is \$25,000.00 appearance bond)
April 11	Filed Magistrate's papers from the U.S. District Court, Southern Dist. of Florida, cy. of warrant of removal on indictment, temporary commitment, final commitment, waiver of removal hearing, order appointing public defender, copy of Indictment, W.D.N.Y., Mag's docket sheet, copy of warrant of arrest, from W.D.N.Y.
April 23	Proceedings before Magistrate - Deft. in person; Deft. requests assignment of counsel. Granted. Deft. remanded to the custody of the Marshal until an Atty. is assigned, and deft. is arraigned
April 25	Proceedings before the Magistrate - Deft. being duly arraigned enters a plea of not guilty to both counts of the indictment. Bail of \$25,000.00 was set by magistrate in Florida. Court reduced bail to \$10,000.00 cash or surety. Adj. to 5/7/1974, for motions and or status report.
April 25	Filed Cy. 5 of CJA-20- Order appointing James L. Lalime, Esq., as counsel for the Deft.—Maxwell, Mag.
May 7	Proceedings before the Magistrate - Motion to dismiss to be made before Judge Curtin, on 5/13/1974.
May 13	Deft. will submit motions of papers to dismiss for insufficiency of evidence, and for expeditious trial; adj. to 5/28/1974.

Criminal Docket Entries

74-2009

Date 1974	Proceedings
May 20	Filed Govt's motion to move action for trial
May 28	Filed Deft's notice of motion for disclosure, bill of particulars, inspection of the G. J. minutes, etc., Brady material, and etc., ret. 6/4/1974 - Maxwell, Magistrate.
May 28	Motions - Case is set for trial June 4, 1974; motions by deft. are before the Magistrate.
May 30	Filed Govt's response to pre-trial motions'
June 4	Both sides reported ready for trial. The Court tentatively set this case for trial on June 11, 1974.
June 12	Filed subpoena to testify - Eugene Moderacki, served 6/8/1974.
June 14	Govt. moves case to trial before Judge Curtin, and Jury at Buffalo, N.Y., trial adj. 6/18/1974.
June 18	Trial continues from June 14, 1974 with same appearances and jury ----outside the presence of the jury - identification hearing is held, witness Pedro Cobo testified, the Court declined testimony by the witness before the Jury in this trial. The Govt. rested its case. The Court denied Deft's motion for a directed verdict of acquittal. Trial is adj. until 6/19/1974-----
June 19	Trial continues with same appearances and jury ---- the jury returns with a verdict of guilty on Count One and Count Two, and a finding on Count Two that the value of the property taken was over \$100.00. The Court discharged the jury. Sentencing set for 7/15/1974.
July 15	Sentence - Deft. is sentenced as follows: Deft. is committed to the custody of the Attorney General for a period of Three (3) Years, ea. ct., sentences to run concurrently, pursuant to Title 18, Section 4208 (a) (2) CURTIN, J.
July 15	J.S. 3 made
July 16	Filed Cy. 5 of CJA-21- Authorization for transcript; cy. to the Adm. off. for payment.

Criminal Docket Entries

Date
1974

Proceedings

July 18	Filed Judgment and commitment. Commitment issued.
July 22	Filed Deft's notice of appeal - copy to the U.S. Atty., Deft., and to the OCA with statement of docket entries and forms CJA 22, and Criminal Case Information (Form A) and Transcript Information (Form B)
August 6	Filed certified cy. of J. and C with Marshal's return on 7/31/74 to FCI, Texarkana, Texas
August 12	Filed Copy of Defense counsel's request for Discovery, dated 4/30/74
August 12	Filed Govt's response dated 5/8/74, to Deft's request for discovery
August 12	Filed Copy of letter from U.S. Magistrate to Judge Curtin, denying Oral motions for Witness discovery before the Magistrate dated May 7, 1974.
August 19	Original papers, docket entries and Clerk's certified mailed to Clerk, OCA (exhibits to be retained by U.S. Atty. until OCA requests them)
August 23	Filed transcript of Ct. Steno for proceedings of trial before J Curtin, commencing on 6/14/74.
August 23	Ct. Steno's transcript of trial, suppl. Index, Suppl. Clerk's certificate, mailed to the Clerk, OCA
August 23	Filed cy. 2 of CJA 21 - voucher for expert - in amt. of \$202. Eugene Knisley; Orig. to Adm. Office for payment
Sept. 3	Filed CJA 20 cy. 2 for atty. James L. Lalime in amt. of \$1,000; Orig. to Adm. Office for payment.

In the District Court of the United States

For the Western District of New York

THE UNITED STATES OF AMERICA

-vs-

TERRY WAYNE JENKINS

NOVEMBER 1973 SESSION ~~1700~~

No. 74 105

Vio. Title 18, U.S.C.,
§§ 2115 and 1707

COUNT I

The Grand Jury Charges:

That on or about the 24th day of February, 1973, in the Western District of New York, the defendant, TERRY WAYNE JENKINS, did forcibly break into a building used as a Post Office of the United States at 161 Goundry Street, North Tonawanda, New York, the defendant, TERRY WAYNE JENKINS, then intending to commit larceny in said Post Office of the United States; all in violation of Title 18, United States Code, Section 2115.

COUNT II

The Grand Jury Further Charges:

That on or about the 24th day of February, 1973, in the Western District of New York, the defendant, TERRY WAYNE JENKINS, did steal and purloin property used by the United States Postal Service and located at 161 Goundry Street, North Tonawanda, New York, to wit; postage stamps, post cards and prepaid envelopes, valued

at approximately \$1,195.00; all in violation of
Title 18, United States Code, Section 1707.

7

JOHN T. ELFVIN
United States Attorney

A TRUE BILL:

J. Richard B. Ruck

Foreman

No. 74 105

UNITED STATES DISTRICT COURT

WESTERN District of NEW YORK

Division

THE UNITED STATES OF AMERICA

vs.

TERRY WAYNE JENKINS

INDICTMENT

A true bill,

Richard B. Roth

Foreman.

Filed in open court this 14th day
of March, A. D. 1974

Clerk.

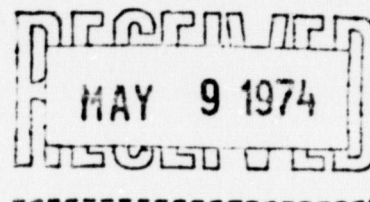
Bail, \$ _____

ADDRESS REPLY TO
UNITED STATES ATTORNEY
ATTENTION OF
ASSISTANT SHOWN BELOW
JAMES A. FRONK

OUR REFERENCE
JAF:bp
CR 74-105

United States Department of Justice

UNITED STATES ATTORNEY
WESTERN DISTRICT OF NEW YORK
UNITED STATES COURT HOUSE
BUFFALO, NEW YORK 14202



May 8, 1974

James L. Lalime, Esq.
Suite 1710
Liberty Bank Building
Buffalo, New York 14202

RE: United States of America vs.
Terry Wayne Jenkins

Dear Mr. Lalime:

The following will comprise the government's answer to your pre-trial discovery request sent to us by letter on April 30, 1974.

The government represents that it has no Brady material at the present time, but is ever mindful of its continuing obligation to produce such material and should such material become known, it will immediately forward it to you.

There were scientific tests conducted on various instruments and articles by the United States Postal Service, but those test have not yet come back from the postal lab. On May 6, 1974, I again inquired as to the results of these tests, as to when they would be forthcoming, and it was indicated to me that by the end of this week they should be in.

The government at this time declines to turn over the names of any witnesses who testified before the Grand Jury.

Other than the general synopsis explained in the following paragraph, the Government knows of no other statements made by defendant to Government agents relating to this offense.

Certain oral statements were given by defendant Jenkins to agents of the United States government and a synopsis of these statements is enclosed with this letter.

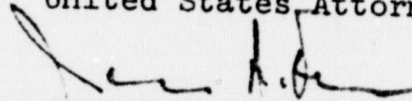
Also enclosed with this letter is a recent copy of defendant's criminal record.

If you have any further discovery requests, do not hesitate to contact me. I believe Magistrate Maxwell indicated in court the other day that it would be best to proceed by motion if any further discovery was desired.

To reiterate, I have not yet received the scientific test results which we spoke about in court yesterday, but will forward them to you as soon as I receive the same.

Very truly yours,

JOHN T. ELFVIN
United States Attorney



BY: JAMES A. FRONK
Assistant United States Attorney

ENC.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA,

Plaintiff

-VS-

TERRY WAYNE JENKINS,

Defendant

CR 74-105

GOVERNMENT'S RESPONSE
TO PRE-TRIAL MOTION

The United States of America by its attorney, John T. Elfvin, United States Attorney in and for the Western District of New York, by James A. Fronk, Assistant United States Attorney, herein responds to certain pre-trial motions made on behalf of the defendant, TERRY WAYNE JENKINS, as follows:

1. That the defendant requests any and all statements made by Government witnesses concerning the guilt or innocence of the defendant. The Government declines to provide any statements made by its witnesses to the defense at this time. The statements of any and all Government witnesses in this matter will be produced at the time of trial in accordance with Title 18, United States Code, Section 3500.

The Government represents that it has no Brady material at the present time, or statements made by witnesses concerning the innocence of the defendant, TERRY WAYNE JENKINS, but it is ever mindful of its continuing obligation to produce such material and should such material become known, it would immediately forward it to the defendant.

2. That the defendant requests that the Government itemize and indicate with particulars any and all evidence of every kind which has been recovered from the private premises of its witnesses. The Government at this time declines to provide any items which might have been seized from the private premises of any of its witnesses.

3. That the defendant has made a prior oral motion in front of the United States Magistrate, Edmund F. Maxwell, for disclosure of the Grand Jury minutes and the names of any and all witnesses who testified before said Grand Jury in relation to this matter. The Grand Jury proceedings resulting in the Indictment herein were transcribed. The Government declines to provide the minutes of the Grand Jury proceedings to the defense at this time. Citing United States v. Youngblood, 379 F.2d 365 (2nd Cir. 1967); United States v. Birrell, 276 F.Supp. 798 (S.D.N.Y. 1967).

The testimony of any and all witness who appeared before the Grand Jury, in this matter, will be produced at the time of trial in accordance with Title 18, United States Code, Section 3500.

DATED AT Buffalo, New York, this 30th day of
May, 1974.

Respectfully submitted,

JOHN T. ELFIN
United States Attorney
Western District of New York
502 United States Court House
Buffalo, New York 14202

BY: 

JAMES A. EGAN
Assistant United States Attorney

TO: JAMES L. LALIME, Esq.,
of Counsel
Attorney for Defendant
1710 Liberty Bank Building
Buffalo, New York 14202

20th Century-Fox Film Corp.
FOR THE

NEW YORK DISTRICT OF NEW YORK

PLAINTIFF
vs.
DEFENDANT

JOHN J. WAY, JR.
vs.
JOHN J. WAY, JR.

JOHN J. WAY, JR.
vs.
JOHN J. WAY, JR.

JOHN J. WAY, JR.
vs.
JOHN J. WAY, JR.

Filed May 30, 1974

By _____, Clerk

By _____, Deputy

Letter of U.S. Magistrate Maxwell
dated May 7, 1974

(See Index to Record No. VI)

1 CROSS EXAMINATION BY MR. LALIME:

2 Q It is Mrs. Diaz, is that right?

3 A Yes, sir. •

4 Q What is the date of your marriage, Mrs. Diaz, and
5 where were you married?

6 A I have been married twice. Which one are you referring
7 to?

8 Q I am looking for, - well, both of them.

9 A I was married in 1964 to Louis Pacheco.

10 Q How do you spell that, please?

11 A P-a-c-h-e-c-o.

12 Q e-c-o?

13 A Yes.

14 Q And where were you married?

15 A In Folkston, Georgia.

16 Q Do you know the spelling of that?

17 A F-o-l-k-s-t-o-n.

18 Q Do you recall who that was by?

19 A It was by a clerk or something. I don't know. We did
20 it in city hall.

21 THE COURT:

Mr. Lalime, does it matter?

22 MR. LALIME:

23 Yes, I think it does, your Honor,
24 in these particular instances. I didn't
25 have the opportunity to interview this
witness beforehand and I have to do a

1 little bit of - -

2 THE COURT:

It does not matter whether the
3 marriage ceremony was performed by a
4 clergyman or a clerk, does it?

5 MR. LALIME:

It might not have been performed,
6 your Honor.

7 THE COURT:

It does not make any different.
8 That is not impeaching material.

9 MR. LALIME:

It isn't. I think it absolutely
10 is.

11 THE COURT:

If you want to step over here and
12 tell me what the purpose of this
13 questioning is, I will listen to it,
14 but it seems that this has absolutely
15 nothing to do with the testimony. Do
16 you want to explain. Explain it over
17 here.

(Sidebar conference held between
18 Court and counsel as follows:

19
20 MR. LALIME:

The first statement she said was
21 she was a widow. Now this widow seems
22 to be married.

23 MR. FRONK:

She was married twice, your Honor.

24 THE COURT:

If it is your point that you are
25 going to impeach her by showing that

1 she was not married - -

2 MR. LALIME:

Right.

3 THE COURT:

4 It seems that that is not impeaching
5 material. If she was living out of
6 wedlock with somebody, as far as I am
7 concerned, that would only be asked to
8 embarrasser. It has nothing to do with
whether she is telling the truth or not.

9 MR. LALIME:

10 I have to develop my case further.
11 This individual, we have information she
12 was receiving welfare checks by fraud
down in Florida.

13 THE COURT:

14 You are in Federal court. You can
15 ask her if she has been convicted of a
16 crime. If you have any material there
17 that would indicate there would be any
18 information because of some connection
19 she had with Jenkins, that it would be
impeaching material, I will permit that.
20 Just a minute, but I am not going to
21 permit you to go into other possible
22 fraud cases about whether or not she was
23 getting welfare checks or not from
24 other agencies. Under the rules, that
25 is completely improper cross examination.

1 They may permit that in State court,
2 but I will not permit it here.

3 MR. LALIME:

4 If I can go one step further so it
5 is on the record. This witness comes
6 in here to testify against my client,
7 and I have to determine what her motives
8 are. One of the basic motives was when
9 they were in Florida, the argument they
10 had down there, she was receiving wel-
11 fare checks down there through fraud
12 and against the law and she says "It is
13 none of your goddamn business".

14 THE COURT:

15 If you can show motive to have bias
16 against this man, I would permit it, but
17 it does not make any difference if this
18 woman was married before a clerk or a
19 clergyman or what. If you wanted this
20 information and you thought it was
21 important, we could have had it before-
22 hand.

23 MR. LALIME:

24 I couldn't. I asked for the witness
25 and - -

26 THE COURT:

27 Let us get to the information you
28 want and let us not ask questions to
29 embarrass her.

1 MR. FRONK:

I should point out there are
2 threats on her life I have not brought
3 out prior to what Mr. Lalime has got
4 into, but I haven't brought it into my
5 direct, why she came to North Tonawanda
6 to begin with.

7 MR. LALIME:

If I don't go into it on cross
8 examination, he can't bring it out on
9 direct.

10 THE COURT:

That's right.

11

(Sidebar conference concluded.)

12

13 THE COURT:

Continue, Mr. Lalime.

14 BY MR. LALIME:

15 Q The date of that first marriage was in 1964, is that
16 right?

17 A Yes, sir.

18 Q And is that the husband that you are widowed from?

19 A No, sir.

20 Q And that marriage ended in divorce, did it?

21 A Yes, sir.

22 Q What was the date of the divorce?

23 A 1966.

24 Q Any children?

25 A One child.

- 1 Q And what is the name of that child?
- 2 A Louis Pacheco.
- 3 Q How old is Louis now?
- 4 A Nine.
- 5 Q And then there came a subsequent marriage?
- 6 A Yes, sir.
- 7 Q And what was the date of that?
- 8 A That was common law in Florida and it was 1967.
- 9 Q And this husband is now deceased, is that right?
- 10 A Yes, sir.
- 11 Q And there were two children by him?
- 12 A Yes, sir.
- 13 Q And their ages are what now?
- 14 A Five and three.
- 15 Q And they live with you now?
- 16 A Yes, sir.
- 17 Q You met Mr. Jenkins down in Florida, is that right?
- 18 A Yes, sir.
- 19 Q But actually, your home has always been in Buffalo, is
- 20 that right?
- 21 A No, sir. I haven't been here since I was thirteen.
- 22 Q Since you were thirteen?
- 23 A Yes, sir.
- 24 Q And you moved down to Florida, is that right?
- 25 A Yes, sir.

1 Q And when was that?

2 A I don't remember the year, but it was when I was thirteen.

3 Q And when was the first time that you met Terry Wayne
4 Jenkins?

5 A In August of '72.

6 Q August of '72, and where was that?

7 A The place or the city?

8 Q The place and the city.

9 A It was at the Stage Door Bar in Hollywood, Florida.

10 Q And that is when you started dating, is that right?

11 A Yes, sir.

12 Q And about how long did you date?

13 A Until I left Florida.

14 THE COURT: Until you left Florida?

15 THE WITNESS: Yes, sir.

16 THE COURT: All right.

17

18 BY MR. LALIME:

19 Q And did he stay with you or did he stay in his own
20 apartment?

21 A No. He lived with his mom and dad.

22 Q Did there come a time sometime during this period that
23 your children were taken away from you?

24 A No, sir.

25 Q Are you receiving public assistance for the two children

1 now or the three children?

2 A Yes, sir.

3 Q Are you receiving it under the name of Pacheco?

4 A No, sir.

5 Q You are receiving it under the name of Diaz?

6 A Yes, sir.

7 Q Now, in the State of Florida, weren't you receiving two
8 checks?

9 A No, sir.

10 Q One for Pacheco?

11 A No.

12 Q And one for Diaz?

13 A No, sir.

14 Q You are absolutely sure of this, is that right?

15 A Yes.

16 Q You told this Court that you left Florida to get away
17 from Terry Wayne Jenkins, is that right?

18 A Yes, sir.

19 Q And how long had you been gone from Florida when Terry
20 Wayne come up to your house?

21 A Two months.

22 Q Then he came right to 68 Oliver Street, is that right?

23 A Yes.

24 Q How did he get that number?

25 A He called me previously and I gave it to him.

1 Q So you weren't really trying to get away from him, were
2 you?

3 A Yes, I was.

4 Q But you did give him your number and your address, is
5 that right?

6 A Yes, sir.

7 Q You told this Court you were afraid of Terry Wayne, is
8 that right?

9 A Yes, sir.

10 Q Now, you still want this Court to believe and this
11 jury to believe that on February 24th, about 10:00 p.m.,
12 Terry Wayne Jenkins left your house, took the screwdriver
13 from your drawer which has been identified by you as
14 your screwdriver?

15 A Yes, sir

16 Q And went over to the post office and come back an hour
17 and fifteen minutes later with five bags, is that right?

18 A Yes, sir. I don't know how many bags there were. There
19 were a few.

20 Q And what color were these bags?

21 A Brown.

22 Q And did you go over to help him with this burglary?

23 A No, sir.

24 Q How big were these bags, Mrs. Diaz?

25 A Large, about the size of garbage bags.